



February 14, 2001

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## HOUSE BILL No. 1556

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DIGEST OF HB 1556 (Updated February 13, 2001 3:31 PM - DI 96)

**Citations Affected:** IC 22-3.

**Synopsis:** Disabled from trade compensation. Creates disabled from trade compensation. Provides that an employee who: (1) has an injury or occupational disease that results in a temporary total disability or a temporary partial impairment; and (2) is capable of performing work with permanent limitations or restrictions that prevent the employee from returning to the position the employee held before the employee's injury or occupational disease may receive compensation for the difference in average weekly earnings lost. Limits disabled from trade compensation to 52 consecutive weeks or 78 aggregate weeks. Provides a cap of \$762 per week for disabled from trade compensation. Makes conforming amendments.

**Effective:** July 1, 2001.

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### Kromkowski, Liggett

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January 11, 2001, read first time and referred to Committee on Labor and Employment.  
February 13, 2001, amended, reported — Do Pass.

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HB 1556—LS 7651/DI 102+



February 14, 2001

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE BILL No. 1556

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A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1       SECTION 1. IC 22-3-3-7 IS AMENDED TO READ AS FOLLOWS  
2 [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) Compensation shall be  
3 allowed on account of injuries producing only temporary total disability  
4 to work or temporary partial disability to work beginning with the  
5 eighth (8th) day of such disability except for medical benefits provided  
6 in section 4 of the chapter. Compensation shall be allowed for the first  
7 seven (7) calendar days only if the disability continues for longer than  
8 twenty-one (21) days.  
9       (b) The first weekly installment of compensation for temporary  
10 disability is due fourteen (14) days after the disability begins. Not later  
11 than fifteen (15) days from the date that the first installment of  
12 compensation is due, the employer or the employer's insurance carrier  
13 shall tender to the employee or to the employee's dependents, with all  
14 compensation due, a properly prepared compensation agreement in a  
15 form prescribed by the board. Whenever an employer or the employer's  
16 insurance carrier denies or is not able to determine liability to pay  
17 compensation or benefits, the employer or the employer's insurance

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carrier shall notify the worker's compensation board and the employee in writing on a form prescribed by the worker's compensation board not later than thirty (30) days after the employer's knowledge of the claimed injury. If a determination of liability cannot be made within thirty (30) days, the worker's compensation board may approve an additional thirty (30) days upon a written request of the employer or the employer's insurance carrier that sets forth the reasons that the determination could not be made within thirty (30) days and states the facts or circumstances that are necessary to determine liability within the additional thirty (30) days. More than thirty (30) days of additional time may be approved by the worker's compensation board upon the filing of a petition by the employer or the employer's insurance carrier that sets forth:

- (1) the extraordinary circumstances that have precluded a determination of liability within the initial sixty (60) days;
- (2) the status of the investigation on the date the petition is filed;
- (3) the facts or circumstances that are necessary to make a determination; and
- (4) a timetable for the completion of the remaining investigation.

An employer who fails to comply with this section is subject to a civil penalty of fifty dollars (\$50), to be assessed and collected by the board upon notice and hearing. Civil penalties collected under this section shall be deposited in the state general fund.

(c) Once begun, temporary total disability benefits may not be terminated by the employer unless:

- (1) the employee has returned to any employment;
- (2) the employee has died;
- (3) the employee has refused to undergo a medical examination under section 6 of this chapter or has refused to accept suitable employment under section 11 of this chapter;
- (4) the employee has received five hundred (500) weeks of temporary total disability benefits or has been paid the maximum compensation allowed under section 22 of this chapter; ~~or~~
- (5) the employee is unable or unavailable to work for reasons unrelated to the compensable injury; **or**
- (6) the employee returns to work with limitations or restrictions, and the employer converts temporary total disability or temporary partial disability compensation into disabled from trade compensation under section 33 of this chapter.**

In all other cases the employer must notify the employee in writing of the employer's intent to terminate the payment of temporary total

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disability benefits and of the availability of employment, if any, on a form approved by the board. If the employee disagrees with the proposed termination, the employee must give written notice of disagreement to the board and the employer within seven (7) days after receipt of the notice of intent to terminate benefits. If the board and employer do not receive a notice of disagreement under this section, the employee's temporary total disability benefits shall be terminated. Upon receipt of the notice of disagreement, the board shall immediately contact the parties, which may be by telephone or other means, and attempt to resolve the disagreement. If the board is unable to resolve the disagreement within ten (10) days of receipt of the notice of disagreement, the board shall immediately arrange for an evaluation of the employee by an independent medical examiner. The independent medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the board under IC 22-3-4-11. If the independent medical examiner determines that the employee is no longer temporarily disabled or is still temporarily disabled but can return to employment that the employer has made available to the employee, or if the employee fails or refuses to appear for examination by the independent medical examiner, temporary total disability benefits may be terminated. If either party disagrees with the opinion of the independent medical examiner, the party shall apply to the board for a hearing under IC 22-3-4-5.

(d) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.

(e) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted from any benefits due the employee under section 10 of this chapter and, if there are no benefits due the employee or the benefits due the employee do not equal the amount of the overpayment, the employee shall be responsible for paying any overpayment which cannot be deducted from benefits due the employee.

SECTION 2. IC 22-3-3-33 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 33. (a) If an employee:**

- (1) receives an injury that results in a temporary total disability or a temporary partial disability; and**
- (2) is capable of performing work with permanent limitations**



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or restrictions that prevent the employee from returning to the position the employee held before the employee's injury; the employee may receive disabled from trade compensation.

(b) An employee may receive disabled from trade compensation for a period not to exceed:

(1) fifty-two (52) consecutive weeks; or

(2) seventy-eight (78) aggregate weeks.

(c) An employee is entitled to receive disabled from trade compensation in a weekly amount equal to STEP FOUR of the following formula:

STEP ONE: Determine the employee's average weekly earnings from employment with limitations or restrictions that is entered after the employee's injury, if any.

STEP TWO: Determine the employee's average weekly earnings from employment before the employee's injury.

STEP THREE: Determine the greater of:

(A) the STEP TWO result minus the STEP ONE result; or

(B) zero (0).

STEP FOUR: Determine the lesser of:

(A) the STEP THREE result; or

(B) seven hundred sixty-two dollars (\$762).

(d) Not later than sixty (60) days after the employee's release to return to work with restrictions or limitations, the employee must receive notice from the employer on a form provided by the board that informs the employee that the employee has been released to work with limitations or restrictions. The notice must include:

(1) an explanation of the limitations or restrictions placed on the employee;

(2) the amount of disabled from trade compensation the employee has been awarded; and

(3) information for the employee regarding the terms of this section.

(e) Disabled from trade compensation is in addition to any other compensation awarded to an employee as a result of a temporary total disability or a permanent partial impairment.

(f) An employer may unilaterally convert an award of compensation for a temporary total disability or a temporary partial disability into disabled from trade compensation by filing a copy of the notice required under subsection (d) with the board.

SECTION 3. IC 22-3-7-16, AS AMENDED BY P.L.31-2000, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 16. (a) Compensation shall be allowed on account

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of disablement from occupational disease resulting in only temporary total disability to work or temporary partial disability to work beginning with the eighth day of such disability except for the medical benefits provided for in section 17 of this chapter. Compensation shall be allowed for the first seven (7) calendar days only as provided in this section. The first weekly installment of compensation for temporary disability is due fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date that the first installment of compensation is due, the employer or the employer's insurance carrier shall tender to the employee or to the employee's dependents, with all compensation due, a properly prepared compensation agreement in a form prescribed by the board. Whenever an employer or the employer's insurance carrier denies or is not able to determine liability to pay compensation or benefits, the employer or the employer's insurance carrier shall notify the worker's compensation board and the employee in writing on a form prescribed by the worker's compensation board not later than thirty (30) days after the employer's knowledge of the claimed disablement. If a determination of liability cannot be made within thirty (30) days, the worker's compensation board may approve an additional thirty (30) days upon a written request of the employer or the employer's insurance carrier that sets forth the reasons that the determination could not be made within thirty (30) days and states the facts or circumstances that are necessary to determine liability within the additional thirty (30) days. More than thirty (30) days of additional time may be approved by the worker's compensation board upon the filing of a petition by the employer or the employer's insurance carrier that sets forth:

- (1) the extraordinary circumstances that have precluded a determination of liability within the initial sixty (60) days;
- (2) the status of the investigation on the date the petition is filed;
- (3) the facts or circumstances that are necessary to make a determination; and
- (4) a timetable for the completion of the remaining investigation.

An employer who fails to comply with this section is subject to a civil penalty of fifty dollars (\$50), to be assessed and collected by the board upon notice and hearing. Civil penalties collected under this section shall be deposited in the state general fund.

(b) Once begun, temporary total disability benefits may not be terminated by the employer unless:

- (1) the employee has returned to work;
- (2) the employee has died;
- (3) the employee has refused to undergo a medical examination



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under section 20 of this chapter;

(4) the employee has received five hundred (500) weeks of temporary total disability benefits or has been paid the maximum compensation allowable under section 19 of this chapter; ~~or~~

(5) the employee is unable or unavailable to work for reasons unrelated to the compensable disease; ~~or~~

**(6) the employee returns to work with limitations or restrictions, and the employer converts temporary total disability or temporary partial disability compensation into disabled from trade compensation under section 16.5 of this chapter.**

In all other cases the employer must notify the employee in writing of the employer's intent to terminate the payment of temporary total disability benefits, and of the availability of employment, if any, on a form approved by the board. If the employee disagrees with the proposed termination, the employee must give written notice of disagreement to the board and the employer within seven (7) days after receipt of the notice of intent to terminate benefits. If the board and employer do not receive a notice of disagreement under this section, the employee's temporary total disability benefits shall be terminated. Upon receipt of the notice of disagreement, the board shall immediately contact the parties, which may be by telephone or other means and attempt to resolve the disagreement. If the board is unable to resolve the disagreement within ten (10) days of receipt of the notice of disagreement, the board shall immediately arrange for an evaluation of the employee by an independent medical examiner. The independent medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the board under IC 22-3-4-11. If the independent medical examiner determines that the employee is no longer temporarily disabled or is still temporarily disabled but can return to employment that the employer has made available to the employee, or if the employee fails or refuses to appear for examination by the independent medical examiner, temporary total disability benefits may be terminated. If either party disagrees with the opinion of the independent medical examiner, the party shall apply to the board for a hearing under section 27 of this chapter.

(c) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.



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(d) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted from any benefits due the employee under this section and, if there are no benefits due the employee or the benefits due the employee do not equal the amount of the overpayment, the employee shall be responsible for paying any overpayment which cannot be deducted from benefits due the employee.

(e) For disablements occurring on and after April 1, 1951, and prior to July 1, 1971, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty percent (60%) of the employee's average weekly wages for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days.

For disablements occurring on and after July 1, 1971, and prior to July 1, 1974, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty percent (60%) of the employee's average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days.

For disablements occurring on and after July 1, 1974, and before July 1, 1976, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages, up to one hundred thirty-five dollars (\$135) average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

For disablements occurring on and after July 1, 1976, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during the temporary total disability weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one





1 (21) days.

2 (f) For disablements occurring on and after April 1, 1951, and prior  
3 to July 1, 1971, from occupational disease resulting in temporary  
4 partial disability for work there shall be paid to the disabled employee  
5 during such disability a weekly compensation equal to sixty percent  
6 (60%) of the difference between the employee's average weekly wages  
7 and the weekly wages at which the employee is actually employed after  
8 the disablement, for a period not to exceed three hundred (300) weeks.  
9 Compensation shall be allowed for the first seven (7) calendar days  
10 only if the disability continues for longer than twenty-eight (28) days.  
11 In case of partial disability after the period of temporary total disability,  
12 the later period shall be included as part of the maximum period  
13 allowed for partial disability.

14 For disablements occurring on and after July 1, 1971, and prior to  
15 July 1, 1974, from occupational disease resulting in temporary partial  
16 disability for work there shall be paid to the disabled employee during  
17 such disability a weekly compensation equal to sixty percent (60%) of  
18 the difference between the employee's average weekly wages, as  
19 defined in section 19 of this chapter, and the weekly wages at which the  
20 employee is actually employed after the disablement, for a period not  
21 to exceed three hundred (300) weeks. Compensation shall be allowed  
22 for the first seven (7) calendar days only if the disability continues for  
23 longer than twenty-eight (28) days. In case of partial disability after the  
24 period of temporary total disability, the latter period shall be included  
25 as a part of the maximum period allowed for partial disability.

26 For disablements occurring on and after July 1, 1974, from  
27 occupational disease resulting in temporary partial disability for work  
28 there shall be paid to the disabled employee during such disability a  
29 weekly compensation equal to sixty-six and two-thirds percent (66  
30  $\frac{2}{3}$ %) of the difference between the employee's average weekly wages,  
31 as defined in section 19 of this chapter, and the weekly wages at which  
32 he is actually employed after the disablement, for a period not to  
33 exceed three hundred (300) weeks. Compensation shall be allowed for  
34 the first seven (7) calendar days only if the disability continues for  
35 longer than twenty-one (21) days. In case of partial disability after the  
36 period of temporary total disability, the latter period shall be included  
37 as a part of the maximum period allowed for partial disability.

38 (g) For disabilities occurring on and after April 1, 1951, and prior  
39 to April 1, 1955, from occupational disease in the following schedule,  
40 the employee shall receive in lieu of all other compensation, on account  
41 of such disabilities, a weekly compensation of sixty percent (60%) of  
42 the employee's average weekly wage; for disabilities occurring on and

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1 after April 1, 1955, and prior to July 1, 1971, from occupational disease  
2 in the following schedule, the employee shall receive in addition to  
3 disability benefits not exceeding twenty-six (26) weeks on account of  
4 said occupational disease a weekly compensation of sixty percent  
5 (60%) of the employee's average weekly wages.

6 For disabilities occurring on and after July 1, 1971, and before July  
7 1, 1977, from occupational disease in the following schedule, the  
8 employee shall receive in addition to disability benefits not exceeding  
9 twenty-six (26) weeks on account of said occupational disease a weekly  
10 compensation of sixty percent (60%) of his average weekly wages not  
11 to exceed one hundred dollars (\$100) average weekly wages, for the  
12 period stated for such disabilities respectively.

13 For disabilities occurring on and after July 1, 1977, and before July  
14 1, 1979, from occupational disease in the following schedule, the  
15 employee shall receive in addition to disability benefits not exceeding  
16 twenty-six (26) weeks on account of the occupational disease a weekly  
17 compensation of sixty percent (60%) of the employee's average weekly  
18 wages, not to exceed one hundred twenty-five dollars (\$125) average  
19 weekly wages, for the period stated for the disabilities.

20 For disabilities occurring on and after July 1, 1979, and before July  
21 1, 1988, from occupational disease in the following schedule, the  
22 employee shall receive in addition to disability benefits, not exceeding  
23 fifty-two (52) weeks on account of the occupational disease, a weekly  
24 compensation of sixty percent (60%) of the employee's average weekly  
25 wages, not to exceed one hundred twenty-five dollars (\$125) average  
26 weekly wages, for the period stated for the disabilities.

27 For disabilities occurring on and after July 1, 1988, and before July  
28 1, 1989, from occupational disease in the following schedule, the  
29 employee shall receive in addition to disability benefits, not exceeding  
30 seventy-eight (78) weeks on account of the occupational disease, a  
31 weekly compensation of sixty percent (60%) of the employee's average  
32 weekly wages, not to exceed one hundred sixty-six dollars (\$166)  
33 average weekly wages, for the period stated for the disabilities.

34 For disabilities occurring on and after July 1, 1989, and before July  
35 1, 1990, from occupational disease in the following schedule, the  
36 employee shall receive in addition to disability benefits, not exceeding  
37 seventy-eight (78) weeks on account of the occupational disease, a  
38 weekly compensation of sixty percent (60%) of the employee's average  
39 weekly wages, not to exceed one hundred eighty-three dollars (\$183)  
40 average weekly wages, for the period stated for the disabilities.

41 For disabilities occurring on and after July 1, 1990, and before July  
42 1, 1991, from occupational disease in the following schedule, the

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employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed two hundred dollars (\$200) average weekly wages, for the period stated for the disabilities.

(1) Amputations: For the loss by separation, of the thumb, sixty (60) weeks; of the index finger, forty (40) weeks; of the second finger, thirty-five (35) weeks; of the third or ring finger, thirty (30) weeks; of the fourth or little finger, twenty (20) weeks; of the hand by separation below the elbow, two hundred (200) weeks; of the arm above the elbow joint, two hundred fifty (250) weeks; of the big toe, sixty (60) weeks; of the second toe, thirty (30) weeks; of the third toe, twenty (20) weeks; of the fourth toe, fifteen (15) weeks; of the fifth or little toe, ten (10) weeks; of the foot below the knee joint, one hundred fifty (150) weeks; and of the leg above the knee joint, two hundred (200) weeks. The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half ( $\frac{1}{2}$ ) of the thumb or toe and compensation shall be paid for one-half ( $\frac{1}{2}$ ) of the period for the loss of the entire thumb or toe. The loss of not more than two (2) phalanges of a finger shall be considered as the loss of one-half ( $\frac{1}{2}$ ) the finger and compensation shall be paid for one-half ( $\frac{1}{2}$ ) of the period for the loss of the entire finger.

(2) Loss of Use: The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange and the compensation shall be paid for the same period as for the loss thereof by separation.

(3) Partial Loss of Use: For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange, compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe, or phalange.

(4) For disablements for occupational disease resulting in total permanent disability, five hundred (500) weeks.

(5) For the loss of both hands, or both feet, or the total sight of both eyes, or any two (2) of such losses resulting from the same disablement by occupational disease, five hundred (500) weeks.

(6) For the permanent and complete loss of vision by enucleation

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of an eye or its reduction to one-tenth (1/10) of normal vision with glasses, one hundred fifty (150) weeks, and for any other permanent reduction of the sight of an eye, compensation shall be paid for a period proportionate to the degree of such permanent reduction without correction or glasses. However, when such permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, but correction or glasses would result in restoration of vision, then compensation shall be paid for fifty percent (50%) of such total loss of vision without glasses plus an additional amount equal to the proportionate amount of such reduction with glasses, not to exceed an additional fifty percent (50%).

(7) For the permanent and complete loss of hearing, two hundred (200) weeks.

(8) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the worker's compensation board, not exceeding five hundred (500) weeks.

(9) In all cases of permanent disfigurement, which may impair the future usefulness or opportunities of the employee, compensation in the discretion of the worker's compensation board, not exceeding two hundred (200) weeks, except that no compensation shall be payable under this paragraph where compensation shall be payable under subdivisions (1) through (8). Where compensation for temporary total disability has been paid, this amount of compensation shall be deducted from any compensation due for permanent disfigurement.

With respect to disablements in the following schedule occurring on and after July 1, 1991, the employee shall receive in addition to temporary total disability benefits, not exceeding one hundred twenty-five (125) weeks on account of the disablement, compensation in an amount determined under the following schedule to be paid weekly at a rate of sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages during the fifty-two (52) weeks immediately preceding the week in which the disablement occurred:

(1) Amputation: For the loss by separation of the thumb, twelve (12) degrees of permanent impairment; of the index finger, eight (8) degrees of permanent impairment; of the second finger, seven (7) degrees of permanent impairment; of the third or ring finger, six (6) degrees of permanent impairment; of the fourth or little finger, four (4) degrees of permanent impairment; of the hand by separation below the elbow joint, forty (40) degrees of permanent

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1       impairment; of the arm above the elbow, fifty (50) degrees of  
 2       permanent impairment; of the big toe, twelve (12) degrees of  
 3       permanent impairment; of the second toe, six (6) degrees of  
 4       permanent impairment; of the third toe, four (4) degrees of  
 5       permanent impairment; of the fourth toe, three (3) degrees of  
 6       permanent impairment; of the fifth or little toe, two (2) degrees of  
 7       permanent impairment; of separation of the foot below the knee  
 8       joint, thirty-five (35) degrees of permanent impairment; and of the  
 9       leg above the knee joint, forty-five (45) degrees of permanent  
 10      impairment.

11      (2) Amputations occurring on or after July 1, 1997: For the loss  
 12      by separation of any of the body parts described in subdivision (1)  
 13      on or after July 1, 1997, the dollar values per degree applying on  
 14      the date of the injury as described in subsection (h) shall be  
 15      multiplied by two (2). However, the doubling provision of this  
 16      subdivision does not apply to a loss of use that is not a loss by  
 17      separation.

18      (3) The loss of more than one (1) phalange of a thumb or toe shall  
 19      be considered as the loss of the entire thumb or toe. The loss of  
 20      more than two (2) phalanges of a finger shall be considered as the  
 21      loss of the entire finger. The loss of not more than one (1)  
 22      phalange of a thumb or toe shall be considered as the loss of  
 23      one-half ( $\frac{1}{2}$ ) of the degrees of permanent impairment for the loss  
 24      of the entire thumb or toe. The loss of not more than one (1)  
 25      phalange of a finger shall be considered as the loss of one-third  
 26      ( $\frac{1}{3}$ ) of the finger and compensation shall be paid for one-third  
 27      ( $\frac{1}{3}$ ) of the degrees payable for the loss of the entire finger. The  
 28      loss of more than one (1) phalange of the finger but not more than  
 29      two (2) phalanges of the finger shall be considered as the loss of  
 30      one-half ( $\frac{1}{2}$ ) of the finger and compensation shall be paid for  
 31      one-half ( $\frac{1}{2}$ ) of the degrees payable for the loss of the entire  
 32      finger.

33      (4) For the loss by separation of both hands or both feet or the  
 34      total sight of both eyes or any two (2) such losses in the same  
 35      accident, one hundred (100) degrees of permanent impairment.

36      (5) For the permanent and complete loss of vision by enucleation  
 37      or its reduction to one-tenth ( $\frac{1}{10}$ ) of normal vision with glasses,  
 38      thirty-five (35) degrees of permanent impairment.

39      (6) For the permanent and complete loss of hearing in one (1) ear,  
 40      fifteen (15) degrees of permanent impairment, and in both ears,  
 41      forty (40) degrees of permanent impairment.

42      (7) For the loss of one (1) testicle, (10) ten degrees of permanent



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1       impairment; for the loss of both testicles, thirty (30) degrees of  
2       permanent impairment.

3       (8) Loss of use: The total permanent loss of the use of an arm, a  
4       hand, a thumb, a finger, a leg, a foot, a toe, or a phalange shall be  
5       considered as the equivalent of the loss by separation of the arm,  
6       hand, thumb, finger, leg, foot, toe, or phalange, and compensation  
7       shall be paid in the same amount as for the loss by separation.  
8       However, the doubling provision of subdivision (2) does not  
9       apply to a loss of use that is not a loss by separation.

10      (9) Partial loss of use: For the permanent partial loss of the use of  
11      an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a  
12      phalange, compensation shall be paid for the proportionate loss of  
13      the use of the arm, hand, thumb, finger, leg, foot, toe, or phalange.

14      (10) For disablements resulting in total permanent disability, the  
15      amount payable for impairment or five hundred (500) weeks of  
16      compensation, whichever is greater.

17      (11) For any permanent reduction of the sight of an eye less than  
18      a total loss as specified in subdivision (3), the compensation shall  
19      be paid in an amount proportionate to the degree of a permanent  
20      reduction without correction or glasses. However, when a  
21      permanent reduction without correction or glasses would result in  
22      one hundred percent (100%) loss of vision, then compensation  
23      shall be paid for fifty percent (50%) of the total loss of vision  
24      without glasses, plus an additional amount equal to the  
25      proportionate amount of the reduction with glasses, not to exceed  
26      an additional fifty percent (50%).

27      (12) For any permanent reduction of the hearing of one (1) or both  
28      ears, less than the total loss as specified in subdivision (4),  
29      compensation shall be paid in an amount proportionate to the  
30      degree of a permanent reduction.

31      (13) In all other cases of permanent partial impairment,  
32      compensation proportionate to the degree of a permanent partial  
33      impairment, in the discretion of the worker's compensation board,  
34      not exceeding one hundred (100) degrees of permanent  
35      impairment.

36      (14) In all cases of permanent disfigurement which may impair  
37      the future usefulness or opportunities of the employee,  
38      compensation, in the discretion of the worker's compensation  
39      board, not exceeding forty (40) degrees of permanent impairment  
40      except that no compensation shall be payable under this  
41      subdivision where compensation is payable elsewhere in this  
42      section.

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1 (h) With respect to disablements occurring on and after July 1,  
 2 1991, compensation for permanent partial impairment shall be paid  
 3 according to the degree of permanent impairment for the disablement  
 4 determined under subsection (d) and the following:

5 (1) With respect to disablements occurring on and after July 1,  
 6 1991, and before July 1, 1992, for each degree of permanent  
 7 impairment from one (1) to thirty-five (35), five hundred dollars  
 8 (\$500) per degree; for each degree of permanent impairment from  
 9 thirty-six (36) to fifty (50), nine hundred dollars (\$900) per  
 10 degree; for each degree of permanent impairment above fifty (50),  
 11 one thousand five hundred dollars (\$1,500) per degree.

12 (2) With respect to disablements occurring on and after July 1,  
 13 1992, and before July 1, 1993, for each degree of permanent  
 14 impairment from one (1) to twenty (20), five hundred dollars  
 15 (\$500) per degree; for each degree of permanent impairment from  
 16 twenty-one (21) to thirty-five (35), eight hundred dollars (\$800)  
 17 per degree; for each degree of permanent impairment from  
 18 thirty-six (36) to fifty (50), one thousand three hundred dollars  
 19 (\$1,300) per degree; for each degree of permanent impairment  
 20 above fifty (50), one thousand seven hundred dollars (\$1,700) per  
 21 degree.

22 (3) With respect to disablements occurring on and after July 1,  
 23 1993, and before July 1, 1997, for each degree of permanent  
 24 impairment from one (1) to ten (10), five hundred dollars (\$500)  
 25 per degree; for each degree of permanent impairment from eleven  
 26 (11) to twenty (20), seven hundred dollars (\$700) per degree; for  
 27 each degree of permanent impairment from twenty-one (21) to  
 28 thirty-five (35), one thousand dollars (\$1,000) per degree; for  
 29 each degree of permanent impairment from thirty-six (36) to fifty  
 30 (50), one thousand four hundred dollars (\$1,400) per degree; for  
 31 each degree of permanent impairment above fifty (50), one  
 32 thousand seven hundred dollars (\$1,700) per degree.

33 (4) With respect to disablements occurring on and after July 1,  
 34 1997, and before July 1, 1998, for each degree of permanent  
 35 impairment from one (1) to ten (10), seven hundred fifty dollars  
 36 (\$750) per degree; for each degree of permanent impairment from  
 37 eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per  
 38 degree; for each degree of permanent impairment from thirty-six  
 39 (36) to fifty (50), one thousand four hundred dollars (\$1,400) per  
 40 degree; for each degree of permanent impairment above fifty (50),  
 41 one thousand seven hundred dollars (\$1,700) per degree.

42 (5) With respect to disablements occurring on and after July 1,

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1998, and before July 1, 1999, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(6) With respect to disablements occurring on and after July 1, 1999, and before July 1, 2000, for each degree of permanent impairment from one (1) to ten (10), nine hundred dollars (\$900) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand six hundred dollars (\$1,600) per degree; for each degree of permanent impairment above fifty (50), two thousand dollars (\$2,000) per degree.

(7) With respect to disablements occurring on and after July 1, 2000, and before July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand dollars (\$2,000) per degree; for each degree of permanent impairment above fifty (50), two thousand five hundred fifty dollars (\$2,500) per degree.

(8) With respect to disablements occurring on and after July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand five hundred dollars (\$1,500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand four hundred dollars (\$2,400) per degree; for each degree of permanent impairment above fifty (50), three thousand dollars (\$3,000) per degree.

(i) The average weekly wages used in the determination of compensation for permanent partial impairment under subsections (g) and (h) shall not exceed the following:

(1) With respect to disablements occurring on or after July 1, 1991, and before July 1, 1992, four hundred ninety-two dollars (\$492).

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(2) With respect to disablements occurring on or after July 1, 1992, and before July 1, 1993, five hundred forty dollars (\$540).

(3) With respect to disablements occurring on or after July 1, 1993, and before July 1, 1994, five hundred ninety-one dollars (\$591).

(4) With respect to disablements occurring on or after July 1, 1994, and before July 1, 1997, six hundred forty-two dollars (\$642).

(5) With respect to disablements occurring on or after July 1, 1997, and before July 1, 1998, six hundred seventy-two dollars (\$672).

(6) With respect to disablements occurring on or after July 1, 1998, and before July 1, 1999, seven hundred two dollars (\$702).

(7) With respect to disablements occurring on or after July 1, 1999, and before July 1, 2000, seven hundred thirty-two dollars (\$732).

(8) With respect to disablements occurring on or after July 1, 2000, and before July 1, 2001, seven hundred sixty-two dollars (\$762).

(9) With respect to injuries occurring on or after July 1, 2001, and before July 1, 2002, eight hundred twenty-two dollars (\$822).

(10) With respect to injuries occurring on or after July 1, 2002, eight hundred eighty-two dollars (\$882).

(j) If any employee, only partially disabled, refuses employment suitable to his capacity procured for him, he shall not be entitled to any compensation at any time during the continuance of such refusal unless, in the opinion of the worker's compensation board, such refusal was justifiable. The employee must be served with a notice setting forth the consequences of the refusal under this subsection. The notice must be in a form prescribed by the worker's compensation board.

(k) If an employee has sustained a permanent impairment or disability from an accidental injury other than an occupational disease in another employment than that in which he suffered a subsequent disability from an occupational disease, such as herein specified, the employee shall be entitled to compensation for the subsequent disability in the same amount as if the previous impairment or disability had not occurred. However, if the permanent impairment or disability resulting from an occupational disease for which compensation is claimed results only in the aggravation or increase of a previously sustained permanent impairment from an occupational disease or physical condition regardless of the source or cause of such previously sustained impairment from an occupational disease or

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physical condition, the board shall determine the extent of the previously sustained permanent impairment from an occupational disease or physical condition as well as the extent of the aggravation or increase resulting from the subsequent permanent impairment or disability, and shall award compensation only for that part of said occupational disease or physical condition resulting from the subsequent permanent impairment. An amputation of any part of the body or loss of any or all of the vision of one (1) or both eyes caused by an occupational disease shall be considered as a permanent impairment or physical condition.

(l) If an employee suffers a disablement from occupational disease for which compensation is payable while the employee is still receiving or entitled to compensation for a previous injury by accident or disability by occupational disease in the same employment, he shall not at the same time be entitled to compensation for both, unless it be for a permanent injury, such as specified in subsection (g)(1), (g)(2), (g)(3), (g)(6), or (g)(7); but the employee shall be entitled to compensation for that disability and from the time of that disability which will cover the longest period and the largest amount payable under this chapter.

(m) If an employee receives a permanent disability from occupational disease such as specified in subsection (g)(1), (g)(2), (g)(3), (g)(6), or (g)(7), after having sustained another such permanent disability in the same employment the employee shall be entitled to compensation for both such disabilities, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation and, when such previous and subsequent permanent disabilities, in combination result in total permanent disability or permanent total impairment, compensation shall be payable for such permanent total disability or impairment, but payments made for the previous disability or impairment shall be deducted from the total payment of compensation due.

(n) When an employee has been awarded or is entitled to an award of compensation for a definite period under this chapter for disability from occupational disease, which disablement occurs on and after April 1, 1951, and prior to April 1, 1963, and such employee dies from any other cause than such occupational disease, payment of the unpaid balance of such compensation, not exceeding three hundred (300) weeks, shall be made to the employee's dependents of the second and third class as defined in sections 11 through 14 of this chapter, and compensation, not exceeding five hundred (500) weeks, shall be made to the employee's dependents of the first class as defined in sections 11

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through 14 of this chapter. When an employee has been awarded or is entitled to an award of compensation for a definite period from an occupational disease wherein disablement occurs on and after April 1, 1963, and such employee dies from other causes than such occupational disease, payment of the unpaid balance of such compensation not exceeding three hundred fifty (350) weeks shall be paid to the employee's dependents of the second and third class as defined in sections 11 through 14 of this chapter and compensation, not exceeding five hundred (500) weeks shall be made to the employee's dependents of the first class as defined in sections 11 through 14 of this chapter.

(o) Any payment made by the employer to the employee during the period of the employee's disability, or to the employee's dependents, which, by the terms of this chapter, was not due and payable when made, may, subject to the approval of the worker's compensation board, be deducted from the amount to be paid as compensation, but such deduction shall be made from the distal end of the period during which compensation must be paid, except in cases of temporary disability.

(p) When so provided in the compensation agreement or in the award of the worker's compensation board, compensation may be paid semimonthly, or monthly, instead of weekly.

(q) When the aggregate payments of compensation awarded by agreement or upon hearing to an employee or dependent under eighteen (18) years of age do not exceed one hundred dollars (\$100), the payment thereof may be made directly to such employee or dependent, except when the worker's compensation board shall order otherwise.

Whenever the aggregate payments of compensation, due to any person under eighteen (18) years of age, exceed one hundred dollars (\$100), the payment thereof shall be made to a trustee, appointed by the circuit or superior court, or to a duly qualified guardian, or, upon the order of the worker's compensation board, to a parent or to such minor person. The payment of compensation, due to any person eighteen (18) years of age or over, may be made directly to such person.

(r) If an employee, or a dependent, is mentally incompetent, or a minor at the time when any right or privilege accrues to the employee under this chapter, the employee's guardian or trustee may, in the employee's behalf, claim and exercise such right and privilege.

(s) All compensation payments named and provided for in this section, shall mean and be defined to be for only such occupational diseases and disabilities therefrom as are proved by competent evidence, of which there are or have been objective conditions or symptoms proven, not within the physical or mental control of the

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employee himself.

SECTION 4. IC 22-3-7-16.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 16.5. (a) If an employee:**

**(1) suffers an occupational disease that results in a temporary total disability or a temporary partial disability; and**

**(2) is capable of performing work with permanent limitations or restrictions that prevent the employee from returning to the position the employee held before the employee's occupational disease;**

**the employee may receive disabled from trade compensation.**

**(b) An employee may receive disabled from trade compensation for a period not to exceed:**

**(1) fifty-two (52) consecutive weeks; or**

**(2) seventy-eight (78) aggregate weeks.**

**(c) An employee is entitled to receive disabled from trade compensation in a weekly amount equal to STEP FOUR of the following formula:**

**STEP ONE: Determine the employee's average weekly earnings from employment with limitations or restrictions that is entered after the employee's occupational disease, if any.**

**STEP TWO: Determine the employee's average weekly earnings from employment before the employee's occupational disease.**

**STEP THREE: Determine the greater of:**

**(A) the STEP TWO result minus the STEP ONE result; or**

**(B) zero (0).**

**STEP FOUR: Determine the lesser of:**

**(A) the STEP THREE result; or**

**(B) seven hundred sixty-two dollars (\$762).**

**(d) Not later than sixty (60) days after the employee's release to return to work with restrictions or limitations, the employee must receive notice from the employer on a form provided by the board that informs the employee that the employee has been released to work with limitations or restrictions. The notice must include:**

**(1) an explanation of the limitations or restrictions placed on the employee;**

**(2) the amount of disabled from trade compensation the employee has been awarded; and**

**(3) information for the employee regarding the terms of this section.**



1       (e) Disabled from trade compensation is in addition to any other  
2       compensation awarded to an employee as a result of a temporary  
3       total disability or a permanent partial impairment.

4       (f) An employer may unilaterally convert an award of  
5       compensation for a temporary total disability or a temporary  
6       partial disability into disabled from trade compensation by filing  
7       a copy of the notice required under subsection (d) with the board.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Labor and Employment, to which was referred House Bill 1556, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, after line 39, begin a new paragraph and insert:

"SECTION 3. IC 22-3-7-16, AS AMENDED BY P.L.31-2000, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 16. (a) Compensation shall be allowed on account of disablement from occupational disease resulting in only temporary total disability to work or temporary partial disability to work beginning with the eighth day of such disability except for the medical benefits provided for in section 17 of this chapter. Compensation shall be allowed for the first seven (7) calendar days only as provided in this section. The first weekly installment of compensation for temporary disability is due fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date that the first installment of compensation is due, the employer or the employer's insurance carrier shall tender to the employee or to the employee's dependents, with all compensation due, a properly prepared compensation agreement in a form prescribed by the board. Whenever an employer or the employer's insurance carrier denies or is not able to determine liability to pay compensation or benefits, the employer or the employer's insurance carrier shall notify the worker's compensation board and the employee in writing on a form prescribed by the worker's compensation board not later than thirty (30) days after the employer's knowledge of the claimed disablement. If a determination of liability cannot be made within thirty (30) days, the worker's compensation board may approve an additional thirty (30) days upon a written request of the employer or the employer's insurance carrier that sets forth the reasons that the determination could not be made within thirty (30) days and states the facts or circumstances that are necessary to determine liability within the additional thirty (30) days. More than thirty (30) days of additional time may be approved by the worker's compensation board upon the filing of a petition by the employer or the employer's insurance carrier that sets forth:

- (1) the extraordinary circumstances that have precluded a determination of liability within the initial sixty (60) days;
- (2) the status of the investigation on the date the petition is filed;
- (3) the facts or circumstances that are necessary to make a determination; and
- (4) a timetable for the completion of the remaining investigation.

**HB 1556—LS 7651/DI 102+**



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An employer who fails to comply with this section is subject to a civil penalty of fifty dollars (\$50), to be assessed and collected by the board upon notice and hearing. Civil penalties collected under this section shall be deposited in the state general fund.

(b) Once begun, temporary total disability benefits may not be terminated by the employer unless:

- (1) the employee has returned to work;
- (2) the employee has died;
- (3) the employee has refused to undergo a medical examination under section 20 of this chapter;
- (4) the employee has received five hundred (500) weeks of temporary total disability benefits or has been paid the maximum compensation allowable under section 19 of this chapter; ~~or~~
- (5) the employee is unable or unavailable to work for reasons unrelated to the compensable disease; ~~or~~
- (6) the employee returns to work with limitations or restrictions, and the employer converts temporary total disability or temporary partial disability compensation into disabled from trade compensation under section 16.5 of this chapter.**

In all other cases the employer must notify the employee in writing of the employer's intent to terminate the payment of temporary total disability benefits, and of the availability of employment, if any, on a form approved by the board. If the employee disagrees with the proposed termination, the employee must give written notice of disagreement to the board and the employer within seven (7) days after receipt of the notice of intent to terminate benefits. If the board and employer do not receive a notice of disagreement under this section, the employee's temporary total disability benefits shall be terminated. Upon receipt of the notice of disagreement, the board shall immediately contact the parties, which may be by telephone or other means and attempt to resolve the disagreement. If the board is unable to resolve the disagreement within ten (10) days of receipt of the notice of disagreement, the board shall immediately arrange for an evaluation of the employee by an independent medical examiner. The independent medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the board under IC 22-3-4-11. If the independent medical examiner determines that the employee is no longer temporarily disabled or is still temporarily disabled but can return to employment that the employer has made available to the employee, or if the employee fails or refuses to appear for examination by the independent medical examiner, temporary total

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disability benefits may be terminated. If either party disagrees with the opinion of the independent medical examiner, the party shall apply to the board for a hearing under section 27 of this chapter.

(c) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.

(d) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted from any benefits due the employee under this section and, if there are no benefits due the employee or the benefits due the employee do not equal the amount of the overpayment, the employee shall be responsible for paying any overpayment which cannot be deducted from benefits due the employee.

(e) For disablements occurring on and after April 1, 1951, and prior to July 1, 1971, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty percent (60%) of the employee's average weekly wages for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days.

For disablements occurring on and after July 1, 1971, and prior to July 1, 1974, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty percent (60%) of the employee's average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days.

For disablements occurring on and after July 1, 1974, and before July 1, 1976, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages, up to one hundred thirty-five dollars (\$135) average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for

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longer than twenty-one (21) days.

For disablements occurring on and after July 1, 1976, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during the temporary total disability weekly compensation equal to sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the employee's average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

(f) For disablements occurring on and after April 1, 1951, and prior to July 1, 1971, from occupational disease resulting in temporary partial disability for work there shall be paid to the disabled employee during such disability a weekly compensation equal to sixty percent (60%) of the difference between the employee's average weekly wages and the weekly wages at which the employee is actually employed after the disablement, for a period not to exceed three hundred (300) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days. In case of partial disability after the period of temporary total disability, the later period shall be included as part of the maximum period allowed for partial disability.

For disablements occurring on and after July 1, 1971, and prior to July 1, 1974, from occupational disease resulting in temporary partial disability for work there shall be paid to the disabled employee during such disability a weekly compensation equal to sixty percent (60%) of the difference between the employee's average weekly wages, as defined in section 19 of this chapter, and the weekly wages at which the employee is actually employed after the disablement, for a period not to exceed three hundred (300) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days. In case of partial disability after the period of temporary total disability, the latter period shall be included as a part of the maximum period allowed for partial disability.

For disablements occurring on and after July 1, 1974, from occupational disease resulting in temporary partial disability for work there shall be paid to the disabled employee during such disability a weekly compensation equal to sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ ) of the difference between the employee's average weekly wages, as defined in section 19 of this chapter, and the weekly wages at which he is actually employed after the disablement, for a period not to exceed three hundred (300) weeks. Compensation shall be allowed for

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the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days. In case of partial disability after the period of temporary total disability, the latter period shall be included as a part of the maximum period allowed for partial disability.

(g) For disabilities occurring on and after April 1, 1951, and prior to April 1, 1955, from occupational disease in the following schedule, the employee shall receive in lieu of all other compensation, on account of such disabilities, a weekly compensation of sixty percent (60%) of the employee's average weekly wage; for disabilities occurring on and after April 1, 1955, and prior to July 1, 1971, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits not exceeding twenty-six (26) weeks on account of said occupational disease a weekly compensation of sixty percent (60%) of the employee's average weekly wages.

For disabilities occurring on and after July 1, 1971, and before July 1, 1977, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits not exceeding twenty-six (26) weeks on account of said occupational disease a weekly compensation of sixty percent (60%) of his average weekly wages not to exceed one hundred dollars (\$100) average weekly wages, for the period stated for such disabilities respectively.

For disabilities occurring on and after July 1, 1977, and before July 1, 1979, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits not exceeding twenty-six (26) weeks on account of the occupational disease a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the disabilities.

For disabilities occurring on and after July 1, 1979, and before July 1, 1988, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding fifty-two (52) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the disabilities.

For disabilities occurring on and after July 1, 1988, and before July 1, 1989, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred sixty-six dollars (\$166) average weekly wages, for the period stated for the disabilities.



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For disabilities occurring on and after July 1, 1989, and before July 1, 1990, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred eighty-three dollars (\$183) average weekly wages, for the period stated for the disabilities.

For disabilities occurring on and after July 1, 1990, and before July 1, 1991, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed two hundred dollars (\$200) average weekly wages, for the period stated for the disabilities.

(1) Amputations: For the loss by separation, of the thumb, sixty (60) weeks; of the index finger, forty (40) weeks; of the second finger, thirty-five (35) weeks; of the third or ring finger, thirty (30) weeks; of the fourth or little finger, twenty (20) weeks; of the hand by separation below the elbow, two hundred (200) weeks; of the arm above the elbow joint, two hundred fifty (250) weeks; of the big toe, sixty (60) weeks; of the second toe, thirty (30) weeks; of the third toe, twenty (20) weeks; of the fourth toe, fifteen (15) weeks; of the fifth or little toe, ten (10) weeks; of the foot below the knee joint, one hundred fifty (150) weeks; and of the leg above the knee joint, two hundred (200) weeks. The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half ( $\frac{1}{2}$ ) of the thumb or toe and compensation shall be paid for one-half ( $\frac{1}{2}$ ) of the period for the loss of the entire thumb or toe. The loss of not more than two (2) phalanges of a finger shall be considered as the loss of one-half ( $\frac{1}{2}$ ) the finger and compensation shall be paid for one-half ( $\frac{1}{2}$ ) of the period for the loss of the entire finger.

(2) Loss of Use: The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange and the compensation shall be paid for the same period as for the loss thereof by separation.

(3) Partial Loss of Use: For the permanent partial loss of the use

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of an arm, hand, thumb, finger, leg, foot, toe, or phalange, compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe, or phalange.

(4) For disablements for occupational disease resulting in total permanent disability, five hundred (500) weeks.

(5) For the loss of both hands, or both feet, or the total sight of both eyes, or any two (2) of such losses resulting from the same disablement by occupational disease, five hundred (500) weeks.

(6) For the permanent and complete loss of vision by enucleation of an eye or its reduction to one-tenth (1/10) of normal vision with glasses, one hundred fifty (150) weeks, and for any other permanent reduction of the sight of an eye, compensation shall be paid for a period proportionate to the degree of such permanent reduction without correction or glasses. However, when such permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, but correction or glasses would result in restoration of vision, then compensation shall be paid for fifty percent (50%) of such total loss of vision without glasses plus an additional amount equal to the proportionate amount of such reduction with glasses, not to exceed an additional fifty percent (50%).

(7) For the permanent and complete loss of hearing, two hundred (200) weeks.

(8) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the worker's compensation board, not exceeding five hundred (500) weeks.

(9) In all cases of permanent disfigurement, which may impair the future usefulness or opportunities of the employee, compensation in the discretion of the worker's compensation board, not exceeding two hundred (200) weeks, except that no compensation shall be payable under this paragraph where compensation shall be payable under subdivisions (1) through (8). Where compensation for temporary total disability has been paid, this amount of compensation shall be deducted from any compensation due for permanent disfigurement.

With respect to disablements in the following schedule occurring on and after July 1, 1991, the employee shall receive in addition to temporary total disability benefits, not exceeding one hundred twenty-five (125) weeks on account of the disablement, compensation in an amount determined under the following schedule to be paid weekly at a rate of sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of the

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employee's average weekly wages during the fifty-two (52) weeks immediately preceding the week in which the disablement occurred:

(1) Amputation: For the loss by separation of the thumb, twelve (12) degrees of permanent impairment; of the index finger, eight (8) degrees of permanent impairment; of the second finger, seven (7) degrees of permanent impairment; of the third or ring finger, six (6) degrees of permanent impairment; of the fourth or little finger, four (4) degrees of permanent impairment; of the hand by separation below the elbow joint, forty (40) degrees of permanent impairment; of the arm above the elbow, fifty (50) degrees of permanent impairment; of the big toe, twelve (12) degrees of permanent impairment; of the second toe, six (6) degrees of permanent impairment; of the third toe, four (4) degrees of permanent impairment; of the fourth toe, three (3) degrees of permanent impairment; of the fifth or little toe, two (2) degrees of permanent impairment; of separation of the foot below the knee joint, thirty-five (35) degrees of permanent impairment; and of the leg above the knee joint, forty-five (45) degrees of permanent impairment.

(2) Amputations occurring on or after July 1, 1997: For the loss by separation of any of the body parts described in subdivision (1) on or after July 1, 1997, the dollar values per degree applying on the date of the injury as described in subsection (h) shall be multiplied by two (2). However, the doubling provision of this subdivision does not apply to a loss of use that is not a loss by separation.

(3) The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half ( $\frac{1}{2}$ ) of the degrees of permanent impairment for the loss of the entire thumb or toe. The loss of not more than one (1) phalange of a finger shall be considered as the loss of one-third ( $\frac{1}{3}$ ) of the finger and compensation shall be paid for one-third ( $\frac{1}{3}$ ) of the degrees payable for the loss of the entire finger. The loss of more than one (1) phalange of the finger but not more than two (2) phalanges of the finger shall be considered as the loss of one-half ( $\frac{1}{2}$ ) of the finger and compensation shall be paid for one-half ( $\frac{1}{2}$ ) of the degrees payable for the loss of the entire finger.

(4) For the loss by separation of both hands or both feet or the

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total sight of both eyes or any two (2) such losses in the same accident, one hundred (100) degrees of permanent impairment.

(5) For the permanent and complete loss of vision by enucleation or its reduction to one-tenth (1/10) of normal vision with glasses, thirty-five (35) degrees of permanent impairment.

(6) For the permanent and complete loss of hearing in one (1) ear, fifteen (15) degrees of permanent impairment, and in both ears, forty (40) degrees of permanent impairment.

(7) For the loss of one (1) testicle, (10) ten degrees of permanent impairment; for the loss of both testicles, thirty (30) degrees of permanent impairment.

(8) Loss of use: The total permanent loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid in the same amount as for the loss by separation. However, the doubling provision of subdivision (2) does not apply to a loss of use that is not a loss by separation.

(9) Partial loss of use: For the permanent partial loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe, or phalange.

(10) For disablements resulting in total permanent disability, the amount payable for impairment or five hundred (500) weeks of compensation, whichever is greater.

(11) For any permanent reduction of the sight of an eye less than a total loss as specified in subdivision (3), the compensation shall be paid in an amount proportionate to the degree of a permanent reduction without correction or glasses. However, when a permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, then compensation shall be paid for fifty percent (50%) of the total loss of vision without glasses, plus an additional amount equal to the proportionate amount of the reduction with glasses, not to exceed an additional fifty percent (50%).

(12) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subdivision (4), compensation shall be paid in an amount proportionate to the degree of a permanent reduction.

(13) In all other cases of permanent partial impairment, compensation proportionate to the degree of a permanent partial impairment, in the discretion of the worker's compensation board,

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not exceeding one hundred (100) degrees of permanent impairment.

(14) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation board, not exceeding forty (40) degrees of permanent impairment except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

(h) With respect to disablements occurring on and after July 1, 1991, compensation for permanent partial impairment shall be paid according to the degree of permanent impairment for the disablement determined under subsection (d) and the following:

(1) With respect to disablements occurring on and after July 1, 1991, and before July 1, 1992, for each degree of permanent impairment from one (1) to thirty-five (35), five hundred dollars (\$500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), nine hundred dollars (\$900) per degree; for each degree of permanent impairment above fifty (50), one thousand five hundred dollars (\$1,500) per degree.

(2) With respect to disablements occurring on and after July 1, 1992, and before July 1, 1993, for each degree of permanent impairment from one (1) to twenty (20), five hundred dollars (\$500) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), eight hundred dollars (\$800) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(3) With respect to disablements occurring on and after July 1, 1993, and before July 1, 1997, for each degree of permanent impairment from one (1) to ten (10), five hundred dollars (\$500) per degree; for each degree of permanent impairment from eleven (11) to twenty (20), seven hundred dollars (\$700) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(4) With respect to disablements occurring on and after July 1,

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1997, and before July 1, 1998, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(5) With respect to disablements occurring on and after July 1, 1998, and before July 1, 1999, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(6) With respect to disablements occurring on and after July 1, 1999, and before July 1, 2000, for each degree of permanent impairment from one (1) to ten (10), nine hundred dollars (\$900) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand six hundred dollars (\$1,600) per degree; for each degree of permanent impairment above fifty (50), two thousand dollars (\$2,000) per degree.

(7) With respect to disablements occurring on and after July 1, 2000, and before July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand dollars (\$2,000) per degree; for each degree of permanent impairment above fifty (50), two thousand five hundred dollars (\$2,500) per degree.

(8) With respect to disablements occurring on and after July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand five hundred dollars (\$1,500) per degree; for each degree of permanent impairment from thirty-six

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(36) to fifty (50), two thousand four hundred dollars (\$2,400) per degree; for each degree of permanent impairment above fifty (50), three thousand dollars (\$3,000) per degree.

(i) The average weekly wages used in the determination of compensation for permanent partial impairment under subsections (g) and (h) shall not exceed the following:

(1) With respect to disablements occurring on or after July 1, 1991, and before July 1, 1992, four hundred ninety-two dollars (\$492).

(2) With respect to disablements occurring on or after July 1, 1992, and before July 1, 1993, five hundred forty dollars (\$540).

(3) With respect to disablements occurring on or after July 1, 1993, and before July 1, 1994, five hundred ninety-one dollars (\$591).

(4) With respect to disablements occurring on or after July 1, 1994, and before July 1, 1997, six hundred forty-two dollars (\$642).

(5) With respect to disablements occurring on or after July 1, 1997, and before July 1, 1998, six hundred seventy-two dollars (\$672).

(6) With respect to disablements occurring on or after July 1, 1998, and before July 1, 1999, seven hundred two dollars (\$702).

(7) With respect to disablements occurring on or after July 1, 1999, and before July 1, 2000, seven hundred thirty-two dollars (\$732).

(8) With respect to disablements occurring on or after July 1, 2000, and before July 1, 2001, seven hundred sixty-two dollars (\$762).

(9) With respect to injuries occurring on or after July 1, 2001, and before July 1, 2002, eight hundred twenty-two dollars (\$822).

(10) With respect to injuries occurring on or after July 1, 2002, eight hundred eighty-two dollars (\$882).

(j) If any employee, only partially disabled, refuses employment suitable to his capacity procured for him, he shall not be entitled to any compensation at any time during the continuance of such refusal unless, in the opinion of the worker's compensation board, such refusal was justifiable. The employee must be served with a notice setting forth the consequences of the refusal under this subsection. The notice must be in a form prescribed by the worker's compensation board.

(k) If an employee has sustained a permanent impairment or disability from an accidental injury other than an occupational disease in another employment than that in which he suffered a subsequent

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disability from an occupational disease, such as herein specified, the employee shall be entitled to compensation for the subsequent disability in the same amount as if the previous impairment or disability had not occurred. However, if the permanent impairment or disability resulting from an occupational disease for which compensation is claimed results only in the aggravation or increase of a previously sustained permanent impairment from an occupational disease or physical condition regardless of the source or cause of such previously sustained impairment from an occupational disease or physical condition, the board shall determine the extent of the previously sustained permanent impairment from an occupational disease or physical condition as well as the extent of the aggravation or increase resulting from the subsequent permanent impairment or disability, and shall award compensation only for that part of said occupational disease or physical condition resulting from the subsequent permanent impairment. An amputation of any part of the body or loss of any or all of the vision of one (1) or both eyes caused by an occupational disease shall be considered as a permanent impairment or physical condition.

(l) If an employee suffers a disablement from occupational disease for which compensation is payable while the employee is still receiving or entitled to compensation for a previous injury by accident or disability by occupational disease in the same employment, he shall not at the same time be entitled to compensation for both, unless it be for a permanent injury, such as specified in subsection (g)(1), (g)(2), (g)(3), (g)(6), or (g)(7); but the employee shall be entitled to compensation for that disability and from the time of that disability which will cover the longest period and the largest amount payable under this chapter.

(m) If an employee receives a permanent disability from occupational disease such as specified in subsection (g)(1), (g)(2), (g)(3), (g)(6), or (g)(7), after having sustained another such permanent disability in the same employment the employee shall be entitled to compensation for both such disabilities, but the total compensation shall be paid by extending the period and not by increasing the amount of weekly compensation and, when such previous and subsequent permanent disabilities, in combination result in total permanent disability or permanent total impairment, compensation shall be payable for such permanent total disability or impairment, but payments made for the previous disability or impairment shall be deducted from the total payment of compensation due.

(n) When an employee has been awarded or is entitled to an award



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of compensation for a definite period under this chapter for disability from occupational disease, which disablement occurs on and after April 1, 1951, and prior to April 1, 1963, and such employee dies from any other cause than such occupational disease, payment of the unpaid balance of such compensation, not exceeding three hundred (300) weeks, shall be made to the employee's dependents of the second and third class as defined in sections 11 through 14 of this chapter, and compensation, not exceeding five hundred (500) weeks, shall be made to the employee's dependents of the first class as defined in sections 11 through 14 of this chapter. When an employee has been awarded or is entitled to an award of compensation for a definite period from an occupational disease wherein disablement occurs on and after April 1, 1963, and such employee dies from other causes than such occupational disease, payment of the unpaid balance of such compensation not exceeding three hundred fifty (350) weeks shall be paid to the employee's dependents of the second and third class as defined in sections 11 through 14 of this chapter and compensation, not exceeding five hundred (500) weeks shall be made to the employee's dependents of the first class as defined in sections 11 through 14 of this chapter.

(o) Any payment made by the employer to the employee during the period of the employee's disability, or to the employee's dependents, which, by the terms of this chapter, was not due and payable when made, may, subject to the approval of the worker's compensation board, be deducted from the amount to be paid as compensation, but such deduction shall be made from the distal end of the period during which compensation must be paid, except in cases of temporary disability.

(p) When so provided in the compensation agreement or in the award of the worker's compensation board, compensation may be paid semimonthly, or monthly, instead of weekly.

(q) When the aggregate payments of compensation awarded by agreement or upon hearing to an employee or dependent under eighteen (18) years of age do not exceed one hundred dollars (\$100), the payment thereof may be made directly to such employee or dependent, except when the worker's compensation board shall order otherwise.

Whenever the aggregate payments of compensation, due to any person under eighteen (18) years of age, exceed one hundred dollars (\$100), the payment thereof shall be made to a trustee, appointed by the circuit or superior court, or to a duly qualified guardian, or, upon the order of the worker's compensation board, to a parent or to such minor person. The payment of compensation, due to any person eighteen (18) years of age or over, may be made directly to such person.



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(r) If an employee, or a dependent, is mentally incompetent, or a minor at the time when any right or privilege accrues to the employee under this chapter, the employee's guardian or trustee may, in the employee's behalf, claim and exercise such right and privilege.

(s) All compensation payments named and provided for in this section, shall mean and be defined to be for only such occupational diseases and disabilities therefrom as are proved by competent evidence, of which there are or have been objective conditions or symptoms proven, not within the physical or mental control of the employee himself.

SECTION 4. IC 22-3-7-16.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 16.5. (a) If an employee:**

- (1) suffers an occupational disease that results in a temporary total disability or a temporary partial disability; and**
- (2) is capable of performing work with permanent limitations or restrictions that prevent the employee from returning to the position the employee held before the employee's occupational disease;**

**the employee may receive disabled from trade compensation.**

**(b) An employee may receive disabled from trade compensation for a period not to exceed:**

- (1) fifty-two (52) consecutive weeks; or**
- (2) seventy-eight (78) aggregate weeks.**

**(c) An employee is entitled to receive disabled from trade compensation in a weekly amount equal to STEP FOUR of the following formula:**

**STEP ONE: Determine the employee's average weekly earnings from employment with limitations or restrictions that is entered after the employee's occupational disease, if any.**

**STEP TWO: Determine the employee's average weekly earnings from employment before the employee's occupational disease.**

**STEP THREE: Determine the greater of:**

- (A) the STEP TWO result minus the STEP ONE result; or**
- (B) zero (0).**

**STEP FOUR: Determine the lesser of:**

- (A) the STEP THREE result; or**
- (B) seven hundred sixty-two dollars (\$762).**

**(d) Not later than sixty (60) days after the employee's release to return to work with restrictions or limitations, the employee must**

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receive notice from the employer on a form provided by the board that informs the employee that the employee has been released to work with limitations or restrictions. The notice must include:

- (1) an explanation of the limitations or restrictions placed on the employee;
- (2) the amount of disabled from trade compensation the employee has been awarded; and
- (3) information for the employee regarding the terms of this section.

(e) Disabled from trade compensation is in addition to any other compensation awarded to an employee as a result of a temporary total disability or a permanent partial impairment.

(f) An employer may unilaterally convert an award of compensation for a temporary total disability or a temporary partial disability into disabled from trade compensation by filing a copy of the notice required under subsection (d) with the board."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1556 as introduced.)

LIGGETT, Chair

Committee Vote: yeas 10, nays 3.

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